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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

Record No. [redacted]

DALE MYERS,
Petitioner

v.

HON. NORMAN R. MOORE, JUDGE,
ROANOKE COUNTY COURT
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS OF VIRGINIA

Dale Myers, In Propria Persona
415 State and City Building
Roanoke, Virginia

ROANOKE PRINTING CO., INC., ROANOKE, VA.

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TO: THE HONORABLE THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Your petitioner, Dale Myers, of Salem, Virginia, respectfully prays that a writ of certiorari be issued out and under the seal of this Honorable Court to review the final decision and decree of the Supreme Court of Appeals of Vrginia, rendered on the 10th of June, 1963, and affirmed September 11, 1963, for the following reasons.

PROCEEDINGS IN THE COURTS BELOW.

In July 1962, a civil warrant was issued against your petitioner in Roanoke County Court (a court not of record) at the instigation of the public corporation, Roanoke County Sanitation Authority, a species of municipal corporation, designated by statute as a "public body politic and corporate", comprised of a purely appointed five-man board of directors. The warrant issued against petitioner was for a cumulative sum of periodic sewage service levies, ordained and assessed by the Authority against petitioner and his property (et al sim sit) at the rate of $9.00 per calendar quarter, potentially for the next 40 years.

Because petitioner was aware that the quarterly rate legislated and assessed by the Authority had been unilaterally fixed by it at a level far in excess of the rate "necessary or properly attributable" to the cost of furnishing its sewage disposal service to the class of sewer users to which petitioner belongs, he besought the Court to order the Authority to submit a bill of particulars, in order to discover the legal basis of the Authority's asserted legal authority to impose its $9 quarterly rate upon him and his property, which rate is radically different (exactly 50% higher) than the rate it was authorized by its charter to impose upon petitioner *et al sim sit*. The Authority responded with a tender of a mere account card showing the dates and the amounts of its sewer service assessments billed against petitioner, failing to disclose any legal basis whatsoever for its authority to make valid claim and enforce its $9 quarterly rate against petitioner. Peti-

tioner thereupon demurred to the Authority's claim asserted in the said warrant, contesting the Authority's legal authorization to force petitioner's payment to it of the amount claimed to be due it (1) on the ground that the Authority's $9 quarterly sewer rate, ordained and assessed against petitioner (*et al sim sit,*) had not been submitted to the jurisdiction and approval of the State Corporation Commission, pursuant to provisions of the *Virginia Water and Sewer Authorities Act* (Code of Va., Section 15-764.1-32, inc.), which he alleged to be a condition precedent to the valid enactment and exaction of its (not charter-approved) $9 quarterly sewer levies against petitioner (et al sim sit), and (2) on the ground that the Authority's charter itself, issued as it was by the State Corporation Commission, pursuant to the *Authorities Act* (subsection 8), is without any validity by virtue of the fact that such chartering (creating) of a municipal corporation by the Commission is specifically and positively forbidden by the Constitution of Virginia, in Sections 156 and 153, which (read in their related context) prescribe that the chartering power of the Commission "*** shall *** exclude all municipal corporations and public institutions owned or controlled by the State."

Because of these statutory and constitutional defects in the Authority's creation and in its sewer-tax rate claims, petitioner maintained in his demurrer that the sewer tax rates autonomously promulgated and assessed against petitioner by the Authority involve the deprivation of his property without due process of law, in violation of rights guaranteed him by both the Con-

stitution of Virginia and the Constitution of the United States.

Petitioner's demurrer was overruled by the Judge of the Roanoke County Court (Hon. Norman R. Moore). Thereupon, petitioner requested leave to file further pleadings in the case, which leave was refused by the Judge.

Subsequently, petitioner made timely move for an appeal, as a matter of right, to the Roanoke County Circuit Court, pursuant to the provisions of Section 16.1-106, *Va. Code, Annotated*. Judge Moore denied the right of an appeal to the Circuit Court by your petitioner, and refused to accept his appeal bond. His reason for this denial, given verbally, was that the constitutional questions raised by petitioner had already been decided by the Supreme Court of Appeals of Virginia, and, hence, no appeal of right would be granted. This conclusion of law was and is, of course, disputed by petitioner.

Thereafter, to prevent the Authority from depriving petitioner of his property without his having the benefit of any judicial review, by a Court of competent jurisdiction, of the questions of law raised by him in his demurrer, he duly filed his Petition in the Supreme Court of Appeals of Virginia for a Peremptory Writ of Mandamus ordering the respondent, Judge Moore, to allow the appeal by petitioner from the County Court to the Circuit Court, a court of record. In its decision, dated June 10, 1963, the Virginia Supreme Court denied the Writ sought by your petitioner. (The

Court's decision is herein reproduced in toto, as part of the Record hereof, under designation of APPENDIX, *infra*.)

PERTINENT STATE CONSTITUTIONAL AND STATUTORY PROVISIONS

The Constitution of Virginia, Article XII, reads as follows:

> "Sec. 156. *Powers, duties and method of procedure of Commission.* (a) Subject to the provisions of this Constitution and to such requirements, rules and regulations as may be prescribed by law, *the State Corporation Commission shall be a department of government through which shall be issued all charters and amendments or extensions thereof, for domestic corporations, and all licenses to do business in this State to foreign corporations; and through which shall be carried out all the provisions of this Constitution, and of the laws made in pursuance thereof, for the CREATION, visitation, supervision, regulation and control of corporations chartered by, or doing business in, this State.*" (Emphasis added)

The same Article XII of the Constitution of Virginia provides:

> "Sec. 153. *Definition of terms used in article; article not to conflict with the constitution of the United States.* — As used in this article, the term 'corporation' or 'company' *shall include* all trusts, associations and joint stock companies having any powers or privileges not possessed by individuals or unlimited part-

nerships, *and exclude all municipal corporations and public institutions owned or controlled by the State; the term 'charter' shall be construed to mean the charter of incorporation by, or under, which any such corporation is formed, etc.* (Emphasis added)

The *Virginia Water and Sewer Authorities Act* (*cit. supra*), pursuant to which the Roanoke County Sanitation Authority was ostensibly chartered by the State Corporation Commission, provides, in subsection .8, that:

> "If the State Corporation Commission finds that the ordinances or resolutions (of the Board of Supervisors of Roanoke County, signifying the purposes for which the Authority is to be created), and the articles of incorporation conform to law and estimated costs and rates for services of proposed projects are fair and equitable, a certificate of incorporation or charter shall forthwith, but not prior to the day specified in said notice for public hearing or referendum, be issued, and thereupon such authority shall be conclusively deemed to have been lawfully and properly created and established and authorized to exercise its power under this chapter. (1950, p. 1316)"

The same *Authorities Act*, in subsection .22, specifies the following powers of, and limitations on the fixing of rates and charges by, an authority:

> "The authority is hereby authorized to fix and revise from time to time rates, fees and other charges for the use of and for the services furnished or to be furnished by any water system, sewer system, sewage disposal system, or

garbage and refuse collection and disposal system owned, operated or maintained by the authority and on account of which the authority shall have issued revenue bonds as authorized by this chapter. *** *such rates, fees and charges shall be subject to the jurisdiction of the State Corporation Commission and to any applicable regulation of the State Corporation Commission or law appertaining thereto.*" (Emphasis added)

And in the next paragraph of this same subsection (.22) of the *Act*, it is prescribed that:

"The rates *** shall be sufficient to cover the expenses necessary or properly attributable to the furnishing of the class of services for which charges are made; *** *Rates, fees and charges,* *** *shall be just and equitable* ***." (Emphasis added)

In the Code of Virginia, Annotated, Section 1-13.17 (1950), it is provided that:

"When the council or authorities of any town or city, or any corporation, board, or number of persons, are authorized to make ordinances, by-laws, rules, regulations or orders, it shall be understood that the same must not be inconsistent with the Constitution and laws of the United States or of this State."

And, in Section 16.1-106 of the Code of Virginia, it is provided that:

"*** there shall be an appeal of right *** (without regard to the value of the matter in controversy) *** when the case involves the *Constitutionality or the validity of a sta-*

*tute of this State, or of an ordinance or by-law of a municipal corporation***"* (Emphasis added)

THE FEDERAL QUESTION AND ARGUMENT

The jurisdiction of this Court is invoked under Title 28, United States Code, Section 1257 (3) (June 25, 1948, c. 646, 62 Stat. 929).

In Amendment XIV, Section 1, of the Constitution of the United States, it is prescribed that:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

In Article VI, Section 2, of the Constitution of the United States, it is prescribed that:

> "This Constitution; *** shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding."

(1) At no point in the proceedings in the courts below has it been denied that the Authority is a "municipal corporation". And nowhere in its opinion herein does the Virginia Supreme Court attempt to reconcile or explain away the direct constitutional conflict between the role of the State Corporation Commission

of chartering (creating) the Authority, pursuant to the provisions of the *Authorities Act*, and the provisions of Sections 156 and 153 of the Virginia Constitution in which it is prescribed that the powers to charter and regulate "corporations", vested in the State Corporation Commission by the Virginia Constitution, categorically, "*** shall *** exclude all municipal corporations and public institutions owned or controlled by the State".

It would appear highly significant, in connection with this issue, that, in the *Hagen* case (SCC Case No. 14169, 1950), the Commission itself, after having "chartered" the Authority and in the teeth of the mandate of the *Authorities Act* (No. 15.764.22) expressly vesting plenary jurisdiction in the Commission over the Authority's rates, judicially repudiated all jurisdiction over the Authority - even the jurisdiction to make a judgment that it has no jurisdiction either to "charter" (create) or regulate the rates of the Authority - presumably for precisely the inescapable reason that any such role of the Commission is forbidden to it by the above-quoted provisions of the Virginia Constitution. From this ruling per se, it is manifest that the Authority's origin and the status of its "charter" present basic questions, as yet not rationally resolved, as to the constitutional validity of its paternity and existence.

As was done in one of petitioner's briefs submitted to the Virginia Supreme Court, petitioner here again directs attention to the fact that it is one of the fundamental principles of the democratic institutions of

the Commonwealth of Virginia - indeed, of the United States - as proclaimed in the *Virginia Bill of Rights* (*Constitution of Va.*, Article I, Sections 1-17, inc.), that only the people or the directly elected representatives of the people, or a proper judicial tribunal acting upon a proper petition of the affected citizens of the Commonwealth, are authorized to create a municipal corporation armed with the coersive powers of government to impose burdens upon the citizens' property; and its powers must, at all times, be amenable to the citizens subject to the jurisdiction of such municipal (government) corporation.

All of these constitutional principles of government are categorically contravened by the manner of the creation and the operation of the municipal corporation designated as the Roanoke County Sanitation Authority, in that its entirely appointed governing body wields autonomous, *carte blanche* power to make bonded debts in any burdensome amounts suiting its pleasure, without prior legal notice or consent of the affected citizens and property owners subjected to its vassalage, and to enact, unilaterally, its ordinances and decrees imposing whatever arbitrary periodic assessments it pleases upon its "sewer serfs", ALL WITHOUT ANY RESPONSIBILITY WHATSOEVER TO THEM OR THEIR ELECTED REPRESENTATIVES.

It is truly not too much to say that, in the teeth of the plain provisions of the Virginia Constitution categorically excluding from the State Corporation Commission the power to charter and create any municipal

corporation, the Virginia Supreme Court has literally repealed this prohibitory provision of the Virginia Constitution at issue herein. And, by this judicial repeal of a fundamental constitutional limitation on the powers of the State's appointive organs of government, whereby the Court justifies its denial of petitioner's right of appeal, the Court's ruling authorizes the deprivation of petitioner's property by the Authority *without due process of law*, in violation of rights secured unto petitioner by the 14th Amendment of the United States Constitution.

(2) In this decision of the Virginia Supreme Court, APPENDIX, *infra*, it is stated that:

> "It is manifest from the above quotation from the *Brooks* case, *supra*, that the contention of the petitioner that the rates for sewer services fixed by the Authority were not submitted to the State Corporation Commission is a mere allegation not supported by the record. Code No. 15-764.4 required that the Authority's rates for sewer service charges be set out in the articles of incorporation which were filed with the Commission before the charter was issued under No. 15-764.8. Thus the rates in question have been subject to the jurisdiction of the State Corporation Commission so as to satisfy the requirements of Code No. 764.22 and there is no requirement under this section that the rates fixed by the Authority be subject to the approval of the Commission."

These statements of the Court give rise to new questions of law and fact.

(a) Here the Court mistakenly adopted a factually false assumption, i. e., that the Authority's sewer rates, as fixed by *its* rate-ordinance herein challenged, are the same as those set out in and authorized by its articles of incorporation, as adopted by the Roanoke County Board of Supervisors and submitted to the State Corporation Commission for its approval as part and parcel of the Authority's charter. *But quite the contrary is true, which is the reason why petitioner challenged the validity of the Authority's rate ordinance and its claims thereunder asserted against petitioner.* Moreover, the respondent herein (the presiding Judge of the Roanoke County Court) was aware of this when he entered judgment for the Authority against this petitioner. (In his *Petition For Rehearing, cf.* Official Record pp. 3-8, *infra*, petitioner addressed himself, in some detail, to this erroneous presumption upon which the Court reasoned its way to the erroneous conclusion that the Authority's rates have been submitted to the jurisdiction of the Commission. Therefore, petitioner specially directs the attention of the Justices of this Court to the matters set forth in the said Petition, *infra*.) Furthermore, petitioner can find no legal basis for the inference that it was incumbent upon him to adduce proof of his "allegation" that the Authority's rates have never been submitted to the jurisdiction of the Commission, in the absence of any denial of this allegation by either the Authority or the respondent in the proceedings below. However, had not the Judge of the Roanoke County Court summarily refused petitioner the right to file further pleadings, after overruling his demurrer, before entering final

judgment against him in favor of the Authority, petitioner would have submitted official documentary proof of this allegation in his defense.

(b) Even more puzzling is the Court's ruling that, "there is no requirement*** (under No. 15.764.22 of the *Authorities Act*) *** that the rates fixed by the Authority be subject to the approval of the Commission." (*Cf. infra*). To reemphasize, subsection .22 of the *Act* provides that the rates and charges of the Authority, as fixed or revised by it, "***shall be subject to the jurisdiction of the State Corporation Commission and all regulations of the State Corporation Commission and any law appertaining thereto." Moreover, in this same subsection of the *Act*, it is prescribed that such rates "***shall be just and equitable***", etc.

But no court has, as yet, addressed itself to, and ruled on, the question of whether the rates, as unilaterally fixed by ordinance of the Authority, are "just and equitable", etc. And, as noted above, it is a matter of judicial record that the State Corporation Commission itself has ruled that it has no jurisdiction over anything pertaining to the legality and equity of the rates ordained and enforced by the Authority - the provisions of the *Act* to the contrary notwithstanding. Reference is here made to the Commission's ruling in *Commonwealth of Virginia rel. Hagen vs. Roanoke County Sanitation Authority, cit. supra.* And now, inexplicably, the Virginia Supreme Court, in its opinion herein (*infra*), cites this decision of the Commission with approval, *in support of the Court's ruling denying petitioner the right of an appeal and, hence, the*

right of Commission review and judicial review of the legality of the Authority's rates. Thus we are presented with the strange spectacle of judicial repeal of a fundamental protective provision of the *Authorities Act*, in addition to the judicial repeal of a fundamental protective provision of the Virginia Constitution. But surely, *in the absence of any right of petitioner to any protective "jurisdiction" of the Commission over the Authority's fixing of its sewer-tax rates, it is self evident that the alternative right of petitioner to judicial review of the autonomous Authority's rate-fixing ordinances must be deemed indispensible for satisfying the requirements of due process of law.*

The Supreme Court of Appeals of Virginia has held, in many decisions, that the statutory imposition of levies on the people by an elective or constitutional body in the state, without a provision for judicial review of said levies by an impartial tribunal, is unconstitutional as violative of due process of law. *A fortiori*, an appointive non-elected government agency such as a sewer authority must needs be subjected to a judicial review of its actions.

In *Heth v. City of Radford* (1898) 96 Va. 272, 31 S. E. 8, wherein the Court said:

> P. 272
> "The imposition of taxes and levies is a "taking" within the meaning of the Constitution of the United States, and if the law under which property is assessed for taxes does not provide an opportunity for the owner to be heard, and contest the justice of the assessment, he is deprived of his property without due process of law, and the law is unconsti-

tutional and void, and the assessment or levy is illegal."

The Court further held:

P. 274.

"It will be observed that this section contains no provision by which the owner of the land may have its value, as ascertained by the board of assessors reviewed and corrected if excessive. No provision is made for a rehearing of the matter by the board upon the complaint of the owner that the land has been valued too high, nor for an appeal to any other tribunal."

See also *Violett, et al, v. City of Alexandria* (1896), 92 Va. 561, 25 S. E. 909,

P. 561.

"Due process of law requires that a person shall have reasonable notice and a reasonable opportunity to be heard before an *impartial tribunal* before any binding *decree* can be made affecting his rights to liberty or property." (Emphasis supplied)

The doctrine of the right of judicial review was definitively established by The United States Supreme Court in *Reagan v. Farmers' Loan and Trust Company*, 154 U. S. 362 (1894). Said the Court, at page 399:

"These cases all support the proposition that, while it is not the province of the courts to enter upon the merely administrative duty of framing a tariff of rates for carriage, it is within the scope of the judicial power, *and a part of the judicial duty*, (sic) to restrain anything which, in the form of a regulation of rates, operates to deny to the owners of pro-

perty invested in the business of transportation that equal protection which is the constitutional right of all owners of other property. ***It has always been a part of the judicial function to determine whether the act of one party***operates to divest the other party of any rights of person or property. In every constitution is the guaranty against the taking of private property for public purposes without just compensation. The equal protection of the laws, which, by the Fourteenth Amendment, no State can deny to the individual, forbids legislation, in whatever form it may be enacted, by which the property of one individual is, without compensation, wrested from him for the benefit of the public."

Even earlier, this Court inscribed in the *corpus* of constitutional rights the principle that a State may not deny the right of an aggrieved person to a judicial review of the rate orders of a rate fixing commission. In *Chicago and St. P. Ry. v. Minnesota*, 134 U. S. 418, 457 (1890), this Court declared that such action,

"*** deprives the company of its right to a judicial investigation, by due process of law. ***A***commission***cannot be regarded as clothed with judicial functions or possessing the machinery of a court of justice."

Later, in the leading *Ben Avon* case, this Court reaffirmed the constitutional necessity of allowing judicial review of the rate-fixing orders of state commissions, saying,

"In all such cases, if the owner claims confiscation of his property will result, the state must

> provide a fair opportunity for submitting that issue to a judicial tribunal for determination upon its own independent judgment as to both law and facts; otherwise the order is void because in conflict with due process, Fourteenth Amendment. *Ohio Valley Water Co. v. Ben Avon Borough*, 253 U. S. 287, 289 (1920)

This Court has never receded from the position that due process requires that, at least in respect to matters of law, a State must provide the right of judicial review to complainants against the rate-fixing orders of State commissions, boards, etc.

A fortiori, in the instant situation, where the levies legislated and imposed upon petitioner and his property proceed from the exertion of the coersive power of a board constituted as an autonomous governmental authority, not elected by or responsible to the citizens subject to its levies, nor responsible for their actions to their elected representatives, the requirements of due process of law must needs vouchsafe petitioner the right of judicial review of such an authority's claims against him. Any other conclusion, manifestly, would make the Authority the final judicial arbiter of the legality of its own legislative actions and exactions - in other words, the master and not the servant of its subject "sewer serfs".

But, *mirabile dictu*, as matters now stand, the rates, as ordained by the Authority not only have not been reviewed by any responsible body of the State, literally, they are not susceptible of being reviewed and made "just and equitable" by any action within the competency of either (1) the sewer taxpayers under servi-

tude to the autonomous bonding and taxing powers of the Authority, or (2) their elected representatives comprising the Roanoke County Board of Supervisors, or (3) The State's utility regulatory body, the State Corporation Commission, or (4) even the courts of the State. Hence, your petitioner, and by the same token, all others similarly situated, are totally without any ascertainable and efficacious remedy, in any forum or tribunal in Virginia, for the redress of any grievances inflicted or that may now freely be inflicted by the unrepresentative, autonomous Authority.

And it is not a little disquieting to reflect upon the fact that this alien state of affairs has been created and licensed by the legislative, executive, and judicial officials of the State which vaunts itself as the cradle of liberty, and whose most illustrious sons pronounced as anathema all forms of "taxation without representation" and impositions of the powers of government without the consent of the governed.

Petitioner submits that the dispensation herein under challenge, albeit now endorsed by the highest court of Virginia, is utterly repugnant to the fundamentals of American constitutional government and jurisprudence, and that it is, therefore, inherently obnoxious to the elementary requirements of due process of law, and deprivatory of petitioner's property, in contravention of rights safeguarded for him by the Fourteenth Amendment of the United States Constitution.

CONCLUSION

That petitioner is surrounded by a bristling barrier of legislative, administrative, and judicial statutes, acts, ordinances, decisions, orders, and decrees whose combined effect is an invidious deprivation of his property without due process of law.

Petitioner summarizes these circumstances as follows: The *Authorities Act* is unconstitutional in that it authorizes the SCC to create the administrative agency which exacts its tolls from him, and in that it designates the SCC as the tribunal to hear his objections to the toll; the SCC, recognizing this, ruled that it, indeed, cannot hear his type of grievance; the State Supreme Court has affirmed that the SCC is correct in this position, even though the *Act* confers jurisdiction (all power to hear and determine controversies) on the SCC, relative to rates, fees and charges of authorities, and that "jurisdiction" does not mean "approval", and, anyway, that petitioner's rate was submitted to the "jurisdiction" of the SCC when it issued a charter to the Authority, despite the fact that the Auhority's charter-designated rate applicable to petitioner *et al sim sit* was $2.00 per month, not $3.00, a fact which, on petition to rehear, the Court ignored.

Further, the Roanoke County Court ruled that petitioner's constitutional hash had been settled by a decision of three years ago, in which neither the same parties nor issues were before the State's highest court, and which issues have never been remotely considered by any State judicial tribunal. Finally, the County Court, not of record, forbade the petitioner to plead

over, after his demurrer had been struck aside, which arbitrary action denied petitioner the opportunity due him to raise such questions of fact which he may have wanted to plead in his defense, *per se* a flagrant judicial abuse of petitioner's rights, all other facets of the case being duly considered.

That both the Supreme Court of Appeals of Virginia and the United States Supreme Court have long recognized that it is a denial of due process of law for a rate making body to set a charge on a citizen without providing for a review of his objections thereto before an independent judicial tribunal.

PRAYER

Accordingly, petitioner respectfully prays that a writ of certiorari be issue out and under the seal of this Honorable Court directed to the Supreme Court of Appeals of Virginia.

Respectfully submitted,

Dale Myers, In Propria Persona
415 State and City Building
Roanoke, Virginia

Dated: December 5, 1963

PROOF OF SERVICE

I, Dale Myers, petitioner herein, depose and say that on the __ day of December, 1963, I served a true copy of the foregoing petition, by mailing the same, with first class postage prepaid, to the following counsel of record:

Robert Y. Button,
Attorney General of Virginia
Supreme Court Building
Richmond, Virginia

Dale Myers

Dale Myers, Petitioner

Subscribed and sworn to before me at Roanoke, Virginia, this 7th day of December, 1963.

My Commission Expires:

March 16, 1966.

Marlene T. Johnson
Notary Public
formerly
Marlene C. Thomas

APPENDIX

Present: Eggleston, C. J., and Spratley, Buchanan, Snead, I'Anson and Carrico, JJ.

DALE MYERS

v.

Record No. 5619

OPINION BY JUSTICE LAWRENCE W. I'ANSON

Richmond, Virginia, June 10, 1963

HONORABLE NORMAN R. MOORE, JUDGE ROANOKE COUNTY COURT

ORIGINAL PETITION FOR WRIT OF MANDAMUS

This is a petition for a preremptory writ of mandamus filed in this Court by Dale Myers to compel the Honorable Norman R. Moore, judge of the Roanoke County Court, to allow him to perfect an appeal to the circuit court of the county from a judgment in the amount of $24.00 entered against him in favor of the Roanoke County Sanitation Authority. Petitioner alleges that the case involves the constitutionality or validity of a statute of this State and that he has an appeal of right under § 16.1-106, Code of 1950, 1960 Replacement Volume.

Section 16.1-106 allows an appeal of right to a court of record from a judgment of a court not of record in a civil case where the amount in controversy is more than fifty dollars or where the case involves the constitutionality or validity of a statute of this State.

The sole issue here is whether the case in the county court presented questions involving the constitu-

tionality or validity of a statute of this State so as to allow petitioner an appeal as a matter of right to the circuit court.

The Roanoke County Sanitation Authority, herein called the Authority, which was created in April, 1955, pursuant to the Virginia Water and Sewer Authorities Act, chapter 22.1 of Title 15, § 15-764.1 through §15-764.32 of the Code, as amended, 1956 Replacement Volume, hereinafter referred to as the Authorities Act, caused a civil warrant to be issued against petitioner to recover for delinquent sewer service charges.

Petitioner filed a demurrer in the county court in which he contended, as he does here, that the issuance of a charter to the Authority by the State Corporation Commission, pursuant to Code § 15-764.8 contravened §§ 153[1] and 156[2] of the Constitution of Virginia, which

1. "§ 153. *Definition of terms used in article; article not to conflict with the Constitution of the United States.*—As used in this article, the term 'corporation' or 'company' shall include all trusts, associations and joint stock companies having any powers or privileges not possessed by individuals or unlimited partnerships, and exclude all municipal corporations and public institutions owned or controlled by the State; the term 'charter' shall be construed to mean the charter of incorporation by, or under, which any such corporation is formed. ***."

2. "§ 156. *Powers, duties and method of procedure of Commission.*—(a) Subject to the provisions of this Constitution and to such requirements, rules and regulations as may be prescribed by law, the State Corporation Commission shall be a department of government through which shall be issued all charters and amendments or extensions thereof, for domestic corporations, and all licenses to do business in this State to foreign corporations, and through which shall be carried out all the provisions of this Constitution, and of the laws made in pursuance thereof, for the creation, visitation, supervision, regulation and control of corporations chartered by, or doing business in, this State. ***."

when read together prohibit the Commission from granting a charter to a municipal corporation or a public institution owned or controlled by the State; and that the quarterly rate assessed against him for sewer services had not been submitted to the jurisdiction and approval of the State Corporation Commission as required by Code § 15-764.22. Thus he said that the sewer assessments fixed by an illegally created authority, and without approval of the State Corporation Commission, deprived him of his property without due process of law.

The county court overruled petitioner's demurrer, and entered judgment for the Authority. Thereupon petitioner moved for an appeal to the circuit court of the county, under the provisions of Code § 16.1-106, which was denied on the grounds that the amount in controversy was less than fifty dollars and that this Court had already decided the constitutional issues raised by the petitioner.

In *Farquhar v. Board of Supervisors*, 196 Va. 54, 69-71, 82 S. E. 2d 577, 586-587, a suit for a declaratory judgment to determine the rights under and the validity of a contract with an authority, the constitutionality of the Authorities Act was attacked on the grounds that § 127 (b) of the Constitution of Virginia required an election as a prerequisite to the issuance of bonds by an authority; that the Act was an improper delegation of legislative power in violation of § 5 of the Constitution; and that the provisions for the enforcement of sewerage connections, the collection of charges and the creation of liens may deprive the landowners of their

property without due process of law. In an exhaustive opinion by Mr. Justice Buchanan, this Court overruled these contentions and sustained the constitutionality of the Act "as being a reasonable exercise of the police power of the State and bearing a substantial relation to the protection and preservation of public health."

The validity of the Authorities Act was recently reaffirmed in *Brooks* v. *Sanitation Authority*, 201 Va. 934, 937, 114 S. E. 2d 758, 761, in which the same Authority involved here was a party. In that case we specifically referred to the power of the State Corporation Commission to grant a charter to an authority when there has been a compliance with the provisions of the Authorities Act. There we said:

"The Authority was duly created by resolution of the Board of Supervisors of Roanoke county dated April 18, 1955, publication of notice and hearing, followed by issuance of a charter by the State Corporation Commission, all in compliance with § 15-764.3 through § 15-764.8. It was thereupon 'conclusively deemed to have been lawfully and properly created and established and authorized to exercise its powers under this chapter.' § 15-764.8." 201 Va. at p. 937, 114 S. E. 2d at p. 761.

It is manifest from the above quotation from the *Brooks* case, *supra*, that the contention of the petitioner that the rates for sewer services fixed by the Authority were not submitted to the State Corporation Commission is a mere allegation not supported by the record. Code § 15-764.4 required that the Authority's rates

for sewer charges be set out in the articles of incorporation which were filed with the Commission before the charter was issued under § 15-764.8. Thus the rates in question have been subject to the jurisdiction of the State Corporation Commission so as to satisfy the requirements of Code § 15-764.22 and there is no requirement under this section that the rates fixed by the Authority be subject to the approval of the Commission. See *Farquhar v. Board of Supervisors, Supra*, 196 Va. at p. 68, 82 S. E. 2d at p. 586. See also *Commonwealth of Virginia, at the relation of John W. Hagen v. Roanoke County Sanitation Authority*, case no. 14169, February 29, 1959, in which the State Corporation Commission dismissed for lack of jurisdiction a petition to review the rates fixed by the Authority.

Nevertheless, petitioner argues that the *Farquhar* and *Brooks* cases are not binding in the present case because the questions raised here concerning the validity of the creation of the Authority and the fixing of its rates were not there considered. We do not agree with petitioner's argument.

Even if it be said that the same constitutional questions raised here have not been previously passed upon, we have repeatedly held that a decree or judgment of this Court upholding the constitutionality of a statute conclusively settles the question of its validity and the statute is then free from all constitutional objections, whether assigned or not. In *City of Portsmouth v. Weiss*, 145 Va. 94, at p. 103, 133 S. E. 781, at p. 784; this Court said:

"It is wholly immaterial that the attack upon the statute in that case was 'upon entirely different grounds.' Whenever a statute is enforced by a judgment or decree of a court, it is a judicial determination that the statute is a valid enactment and is free from *all constitutional objections.* If unconstitutional for any reason, whether assigned or not, the statute is void." See *Miller* v. *State Entomologist*, 146 Va. 175, 135 S. E. 813, 814, 67 A. L. R. 197, aff. *Miller* v. *Schoene*, 276 U. S. 272, 48 S. Ct. 246, 72 L. ed. 568; *Board of Supervisors* v. *State Milk Commission*, 191 Va. 1, 11, 60 S.E. 2d 35, 40, app. dism. 340 U. S. 881, 71 S. Ct. 198, 95 L. ed. 640; *Edwards* v. *Commonwealth*, 191 Va. 272, 285, 286, 60 S. E. 2d 916, 922; *Almond* v. *Day*, 197 Va. 419, 430, 431, 89 S. E. 2d 851, 859. See also 82 C. J. S., Statutes, § 91, p. 148.

The reason for the above principle is that in a well ordered society it is important for people to know what their legal rights are, not only under constitutions and legislative enactments but also as defined by judicial precedent, and when they have conducted their affairs in reliance thereon they ought not to have their rights swept away by judicial decree when at a later date other grounds may be conceived to attack the constitutionality of a statute. This is especially true where property rights are involved. Under the Authorities Act numerous improvement districts have been created and financed in reliance upon the pronouncement of this Court that it is free from constitutional objections. Thus the doctrine of *stare decisis*, one of the most important principles in the structure of our law, should here apply with all its force.

Where the sole ground for an appeal to this Court is the constitutionality of a statute, the validity of which has been settled by our former decisions, an appeal will not be entertained. *Western Un. Tel. Co.* v. *Goddin*, 94 Va. 513, 515; 516, 27 S. E. 429; *Western Union Telegraph Co.* v. *White*, 113 Va. 421, 74 S. E. 174, 175; 1 Mich. Jur., Appeal and Error, § 83, p. 543. This same rule applies with equal force to an appeal from a county court to a court of record.

For the reasons stated, we hold that the petitioner's case in the county court did not involve any unresolved questions concerning the constitutionality or validity of a State statute and the petitioner has no right of appeal to the Circuit Court of Roanoke County under Code § 16.1-106. The writ of mandamus is denied, and the petition, therefore, dismissed.

Mandamus denied.

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Monday the 10th day of June, 1963.

Dale Myers, Petitioner,

against Record No. 5609

Honorable Norman R. Moore, Judge of Roanoke County Court, Respondent.

Upon a Petition for a Peremptory Writ of Mandamus

This day came again the parties, by counsel, and the court having maturely considered the transcript of the record and arguments of counsel, is of opinion, for

reasons stated in writing and filed with the record, that a writ of mandamus should not issue as prayed for. It is therefore considered that the said petition be dismissed, and that the respondent recover of the petitioner his costs by him expended about his defense herein.

A Copy,

Teste:

Clerk

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 11th day of September, 1963.

Dale Myers, Petitioner.

against

Honorable Norman R. Moore, Judge of Roanoke County Court, Respondent.

Upon a Petition to Rehear

On mature consideration of the petition of the petitioner to set aside the order entered herein on the 10th day of June, 1963, and grant a rehearing thereof, the prayer of the said petition is denied.

A Copy,

Teste:

Clerk

VIRGINIA:

Before John W. Eggleston, Chief Justice of the Supreme Court of Appeals of Virginia, on Friday, the 27th day of September, 1963, in vacation of said Court.

Dale Myers, Petitioner,

against Record No. 5619

Honorable Norman R. Moore, Judge of Roanoke County Court, Respondent.

ORDER STAYING EXECUTION OF JUDGMENT

Upon consideratioin of the application of the petitioner praying for a stay of execution of the judgment entered herein on September 11, 1963, in order that he may have reasonable time and opportunity to present to the Supreme Court of the United States a petition for a writ of certiorari to review the judgment of this court, it is now ordered that the execution and enforcement of the judgment of this court in the above-styled case entered on September 11, 1963, be, and the same is hereby, stayed, until the 10th of December, 1963, on the expiration of which time the same may be enforced unless the case has been before that time docketed in the Supreme Court of the United States, in which event enforcement thereof shall be stayed until the final determination of the case by that court.

/s/ John W. Eggleston
Chief Justice of the
Supreme Court of
Appeals of Virginia

A Copy,
Teste:

Clerk